

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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UTICA MUTUAL INSURANCE  
COMPANY,

6:13-cv-1178

Plaintiff,

v.

CLEARWATER INSURANCE  
COMPANY,

Defendant.

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VERDICT FORM

PLEASE NOTE: YOUR VERDICT SHOULD BE REPORTED TO THE  
JUDGE ON THIS VERDICT FORM, WHICH MUST BE SIGNED BY THE  
JURY FOREPERSON.

There should be a total of five (5) pages in this Verdict Form Packet,  
including this sheet.

## SECTION A: UTICA'S BREACH OF CONTRACT CLAIM

Question No. 1: [Clearwater's Liability to Utica under the primary policies/ "Loss"]

Did Utica prove by a preponderance of the evidence that Utica and Goulds intended for the 1978-81 *primary policies* to contain aggregate limits?

Answer to Question No. 1: Yes: ✓ No:       

Question No. 2: [Clearwater liability to Utica under umbrella policies/ "Expense"]

Did Utica prove by a preponderance of the evidence that it had an obligation to defend Goulds under the 1978-81 *umbrella policies*?

Answer to Question No. 2: Yes: ✓ No:       

Question No. 3: [Clearwater liability to Utica/ "Good Faith Settlement"]

Did Utica prove by a preponderance of the evidence that its settlement with Goulds was negotiated in good faith?

Answer to Question No. 3: Yes: ✓ No:       

If you answered "No" to question 3, then proceed to Section B. Otherwise, proceed to question 4.

Question No. 4: [Clearwater defense to "Good Faith Settlement"]

Did Clearwater prove by substantial evidence that Utica's settlement reflected bad faith, fraud, or factual or legal error?

Answer to Question No. 4: Yes:        No: ✓

If you answered either (i) "Yes" to question 1 or (ii) "Yes" to question 3 and "No" to question 4, then proceed to Section B. Otherwise, proceed to Section D.

## SECTION B: CLEARWATER'S AFFIRMATIVE DEFENSE

Question No. 5: [Clearwater affirmative defenses/no liability to Utica]

Did Clearwater prove by a preponderance of the evidence that Utica breached either its implied duty of good faith or its duty of utmost good faith?

Answer to Question No. 5: Yes: \_\_\_\_\_ No: ✓

If you answered "No" to question 5, proceed to Section C. If you answered "Yes" to question 5, proceed to questions 8 and 9.

## SECTION C: Utica Damages

If you answered either (i) "Yes" to question 1 and "No" to question 5 or (ii) "Yes" to question 3 and "No" to questions 4 and 5, then answer questions 6 and 7 below.

Question No. 6: How much in damages do you award to Utica?

Answer to Question No. 6: \$ 10,901,005.03.

Question No. 7: [Prejudgment Interest]

On what date did Utica suffer damages?

Answer to Question No. 7: December 2, 2012.

Proceed to Section D.



**SECTION D: CLEARWATER'S BREACH OF CONTRACT  
COUNTERCLAIM AND DAMAGES**

If you answered "Yes" to question 1 and "No" to question 5, then stop here and sign your verdict form.

If you answered "Yes" to question 3 and "No" to questions 4 and 5, then stop here and sign your verdict form.

Otherwise, answer questions 8 and 9.

**Question No. 8: [Utica liability to Clearwater/breach of contract counterclaim]**

**Did Clearwater prove by a preponderance of the evidence that Utica breached the reinsurance contracts?**

**Answer to Question No. 8: Yes: \_\_\_\_\_ No: \_\_\_\_\_**

**Question No. 9: Did Utica prove by a preponderance of the evidence that Clearwater waived its right to recover the \$993,159 that it paid under the reinsurance contracts?**

**Answer to Question No. 9: Yes: \_\_\_\_\_ No: \_\_\_\_\_**

If you answered "Yes" to questions 8 and 9, then stop here and sign your verdict form.

If you answered "Yes" to question 8 and "No" to question 9, proceed to questions 10 and 11.

**Question No. 10: How much in damages do you award to Clearwater on its counterclaim?**

**Answer to Question No. 10: \$\_\_\_\_\_.**

Question No. 11: [Prejudgment Interest]

On what date did Clearwater suffer damages?

Answer to Question No. 11: \_\_\_\_\_.

You are concluded.

YOUR DELIBERATIONS ARE COMPLETE.

REPORT YOUR VERDICT TO THE MARSHAL. PLEASE REMEMBER  
TO DATE AND SIGN THIS VERDICT SHEET. THANK YOU.

July 8, 2021  
Date

\*\*\* REDACTED \*\*\*

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Foreperson